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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

K.D., an individual,

Plaintiff(s),

v.

UNITED AIRLINES, INC., et al.,

Defendant(s).

Case No.: 2:17-cv-02825-RFB-NJK

**Order**

[Docket No. 112]

Before the Court is Defendant's affidavit of reasonable attorneys' fees incurred in bringing a motion for sanctions for Plaintiff's violation of the Court's discovery order. Docket No. 112. Plaintiff filed a response. Docket No. 121. Defendant filed a reply in support of its affidavit. Docket No. 123.

**I. Background**

On October 18, 2018, Defendant filed an emergency motion to compel discovery and a motion for attorneys' fees for the motion to compel. Docket Nos. 82, 83. On November 26, 2018, the Court granted Defendant's motion to compel in part and motion for attorneys' fees, and ordered Defendant to submit an affidavit of reasonable attorneys' fees and costs. Docket No. 99 at 6. The Court allowed Plaintiff to respond and Defendant to reply. *Id.*

**II. Propriety of Sanctions**

As a threshold matter, Plaintiff contends that sanctions are not appropriate because she has an inability to pay. Docket No. 121 at 2. Plaintiff submits that she has lost her job with her

1 previous employer and, as a result, has no steady stream of income at this point. *Id.* at 3. Plaintiff  
2 also submits that she has no other means to pay a monetary sanction and that she borrowed money  
3 to pay her last monetary sanction. *Id.* at 3. Plaintiff asks the Court to either waive any monetary  
4 award to United or allow her to pay sanctions at the conclusion of trial. *Id.*

5 The ability of a party to pay is one factor a court should consider when imposing sanctions.  
6 *In re Yagman*, 796 F.2d 1165, 1185 (9th Cir.), *amended*, 803 F.2d 1085 (9th Cir.1986). Circuits  
7 that have addressed this issue have held the sanctioned party has the burden to produce evidence  
8 of inability to pay. *In re Kunstler*, 914 F.2d 505, 524 (4th Cir.1990), *cert. denied*, 499 U.S. 969,  
9 111 S. Ct. 1607, 113 L.Ed.2d 669 (1991); *Dodd Ins. Services, Inc. v. Royal Ins. Co. of America*,  
10 935 F.2d 1152, 1160 (10th Cir.1991).

11 In support of her assertion that she cannot pay sanctions, Plaintiff submits a bare bones  
12 declaration containing less than one page of substantive text. Docket No. 121-1. Plaintiff fails to  
13 even attempt to produce evidence of inability to pay. *Id.*

14 In reply, Defendant submits that Plaintiff's declaration fails to provide the Court with  
15 information regarding all of her sources of income for the past twelve months. Docket No. 123 at  
16 4. Further, Defendant submits that Plaintiff has claimed an annual salary of \$180,000 since 2015,  
17 and appears to own multiple real estate properties. *Id.* at 4-5. Defendant additionally submits that  
18 Plaintiff's 2012 divorce decree shows that she had additional assets, including retirement accounts,  
19 an art collection, an airplane, and 18 firearms. *Id.* Finally, Defendant submits that, even if Plaintiff  
20 carried her burden of providing financial indigence, this is not a case where relief from sanction is  
21 appropriate. *Id.* at 5.

22 The Court finds that Plaintiff's bare bones, unsupported assertions of indigence are  
23 insufficient to meet the burden of demonstrating an inability to pay, even without considering  
24 Defendant's submission regarding her assets.

### 25 **III. Lodestar Calculation**

26 Having already determined that Defendant is entitled to recover attorneys' fees incurred in  
27 bringing its motion to compel, Docket No. 99 at 6, the Court turns to the calculation of the fees.  
28 Reasonable attorneys' fees are generally calculated using the traditional "lodestar" method. *See*,

1 *e.g.*, *Camacho v. Bridgeport Fin'l, Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). Under the lodestar  
2 method, the Court determines a reasonable fee by multiplying “the number of hours reasonably  
3 expended on the litigation” by “a reasonable hourly rate.” *See Hensley v. Eckerhart*, 461 U.S. 424,  
4 433 (1983). The lodestar figure is presumptively reasonable. *Cunningham v. County of Los*  
5 *Angeles*, 879 F.2d 481, 488 (9th Cir. 1988).

6 *A. Reasonable Hours*

7 The touchstone in determining the hours for which attorneys’ fees should be calculated is  
8 whether the expenditure of time was reasonable. *See, e.g., Marrocco v. Hill*, 291 F.R.D. 586, 588  
9 (D. Nev. 2013). The reasonable amount of hours expended depends on the circumstances of each  
10 case. *See Camacho*, 523 F.3d at 978. The Court has a great deal of discretion in determining the  
11 reasonableness of the fee, although the Court may exclude hours related to overstaffing,  
12 duplication, and excessiveness. *See Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 453  
13 (9th Cir. 2010) (quoting *Gates v. Deukmejian*, 987 F.2d 1392, 1398 (9th Cir. 1992)); *see also*  
14 *Hensley*, 461 U.S. at 433. In making the determination of the reasonableness of hours expended  
15 on such motions, “the Court considers factors such as the complexity of the issues raised, the need  
16 to review the record and pleadings, and the need to conduct legal research, in addition to the length  
17 of the briefing.” *See, e.g., Marrocco*, 291 F.R.D. at 588.

18 Defendant seeks to recover fees for 19.1 hours in preparing the motion to compel. Docket  
19 No. 112. Defendant submits that associate attorney Michael Cutler spent 17.1 hours preparing its  
20 motion for sanctions between October 16, 2018, and November 12, 2018. Docket No. 112 at 3.  
21 Defendant submits a breakdown of the time Mr. Cutler spent on the motion. Docket No. 112-1.  
22 Defendant further submits that attorney Richard Lazenby spent 2 hours on the motion. Docket  
23 No. 112 at 4. Mr. Lazenby, a senior attorney to Mr. Cutler, spent this time reviewing and revising  
24 the motion and reply, and advising Mr. Cutler. Docket No. 112-2.

25 In response, Plaintiff contends that the time expended was excessive and should not all be  
26 recoverable. Docket No. 121 at 3-4. Plaintiff submits that Defendant has already been granted  
27 sanctions for motions that had “somewhat similar” issues to those raised in the instant motion. *Id.*  
28 at 3. Plaintiff further submits that, as Defendant’s motion was only granted in part and part of

1 Defendant's request relief was denied, Defendant's proposed attorney hours are unreasonable and  
2 the request for sanctions should be denied. *Id.*

3 In reply, Defendant submits that the Court has, in the past, found that higher hours than  
4 those requested here were reasonable in similar motions to compel. Docket No. 123 at 6.  
5 Defendant contends that the motion was not repetitive of a prior motion and required substantial  
6 briefing. *Id.* at 7. Defendant also contends that, while the Court did not grant the courthouse  
7 deposition, it was justified in asking the Court to supervise Plaintiff's deposition based on  
8 Plaintiff's pattern of discovery abuse. *Id.* Finally, Defendant submits that Plaintiff did not cite  
9 any case law in her response to the motion. *Id.*

10 The Court has reviewed the hours submitted by Defendant. Most of the work was  
11 completed by an associate attorney, and a small amount of the time was expended by a senior  
12 attorney in reviewing the associate's work. The Court finds that no overstaffing or duplication of  
13 work occurred. Further, the Court has considered the need to review the documents, the  
14 complexity of the issues raised, and the length of the briefing. The Court finds the reasonable  
15 hours expended by Defendant's counsel on the motion to compel to be 8.2 hours considering all  
16 the necessary factors. Further, as the motion for attorneys' fees was substantially similar to the  
17 motion to compel, the Court finds that a total of one hour of work for Mr. Cutler for that motion  
18 is reasonable. Therefore, the Court finds that Mr. Cutler's reasonable hours are 9.2 for both  
19 motions.

#### 20 *B. Hourly Rate*

21 Having determined the hours reasonably expended by counsel, the Court turns to the hourly  
22 rate with which to calculate the lodestar. The party seeking an award of attorneys' fees bears the  
23 burden of establishing the reasonableness of the hourly rates requested. *Camacho*, 523 F.3d at  
24 980. "To inform and assist the court in the exercise of its discretion, the burden is on the fee  
25 applicant to produce satisfactory evidence—in addition to the attorney's own affidavits—that the  
26 requested rates are in line with those prevailing in the community for similar services by lawyers  
27 of reasonably comparable skill, experience and reputation." *Blum v. Stenson*, 465 U.S. 886, 895  
28 n.11 (1984). The Court may also rely on its own familiarity with the rates in the community to

1 analyze those sought in the pending case. *Ingram v. Oroudjian*, 647 F.3d 925, 928 (9th Cir. 2011).  
2 “Rate determinations in other cases in the District of Nevada have found hourly rates as much as  
3 \$450 for partners and \$250 for an experienced associate to be the prevailing market rate in this  
4 forum.” *Perrigo v. Premium Asset Servs., LLC*, 2015 WL 4597569, \*10 (D. Nev. July 28, 2015).

5 In this case, Defendant seeks an hourly rate of \$225 for Mr. Cutler, an attorney four years  
6 of experience and an hourly rate of \$350 for Mr. Lazenby, an attorney with twenty years of  
7 experience. Docket No. 112. Counsel’s declarations attest to the background and biographical  
8 information for these attorneys. *Id.* Accordingly, the Court finds the hourly rate of \$225 for Mr.  
9 Cutler and \$350 for Mr. Lazenby reasonable.

10 **IV. Conclusion**

11 For the reasons discussed above, the Court hereby awards Defendant its attorneys’ fees in  
12 the sum of \$2,770. Plaintiff must make payment to Defendant’s counsel in this amount no later  
13 than January 25, 2019.

14 IT IS SO ORDERED.

15 Dated: January 11, 2019

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19 Nancy J. Koppe  
20 United States Magistrate Judge  
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